

THIS IS A TRANSFER FROM A TOWN
PURSUANT TO NEW HAMPSHIRE RSA 78-B:2I
AND IS THEREFORE EXEMPT FROM THE NEW
HAMPSHIRE REAL ESTATE TRANSFER TAX.

057806

CONSERVATION EASEMENT DEED
With Grant of Access

The **TOWN OF STRATHAM**, a municipal corporation with a principal place of business at 10 Bunker Hill Avenue, Town of Stratham, County of Rockingham, State of New Hampshire, (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grant in perpetuity to

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 12 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

with Third Party Right of Enforcement therein granted to the STATE OF NEW HAMPSHIRE acting through its DEPARTMENT OF ENVIRONMENTAL SERVICES, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (the "Third Party Holder").

The Easement has been granted as part of a wetlands mitigation project (NHDES File #2014-03080), and in accordance with New Hampshire RSA 227-M:14, notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any resource asset acquired under the Third Party Holder's grant to uses or purposes not

2015 DEC 29 PM 3:21

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

consistent with the purposes of RSA chapter 227-M shall be permitted. The sale, transfer, conveyance, or release of any resource asset from public trust is prohibited, in accordance with RSA 227-M, except as provided in RSA 227-M:13,

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all structures, and improvements thereon, consisting of approximately twenty-nine (29) acres, situated off of Boat Club Drive in the Town of Stratham, County of Rockingham, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan entitled "Plat of Zarnowski Land Off Boat Club Drive Stratham, New Hampshire" by James Verra and Associates, Inc. dated January 16, 2006, Revised February 5, 2007 and recorded at the Rockingham County Registry of Deeds as Plan # D-34723 (herein referred to as the "Survey").

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the "Purposes") for the public benefit:

- A. The protection of approximately three (3) acres of saltmarsh along the Squamscott River which is part of the largest saltmarsh system in the Great Bay estuary, and the enhancement and expansion of the existing conservation land base in the area which includes 210 acres of protected land adjacent to the Property and an additional 110 acres of protected land across the river, said other land including the 206-acre Scamman Farm conservation easements held by SELT, the 4.5-acre Squamscott Scullers conservation easement, the 50-acre Raynes Farm owned by the Town of Exeter, the 27-acre Harrington Conservation Easement held by SELT, and the 33-acre Callahan Conservation Easement held by SELT; and
- B. The conservation of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon including productive saltmarsh, early successional habitat associated with the utility corridor and forest connectivity for species crossing the Squamscott River; and the protection of the undeveloped 627 feet of frontage along the tidally influenced Squamscott River, to which the Property provides access and upon which it fronts, and the long-term protection of the Property's capacity to produce economically valuable forestry products including approximately 12 acres of productive Group I forest soils; and
- C. The scenic enjoyment of the general public that paddle or boat along the Property's 627 feet of frontage on the Squamscott River; and
- D. The protection of the quality and availability of ground water and surface water resources on and under the Property.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 1998 Master Plan of the Town of Stratham, which

states in Chapter 7 "Resource Conservation and Preservation", Section "6.3 Water Resources": "The Town should acquire land or development rights to key parcels, if needed to protect future town water supplies. Such acquisitions should be integrated with Town wide open space protection efforts."; and identified as an open space parcel in Chapter 7 "Resource Conservation and Preservation" on map "RCP 10"; and with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. There shall not be conducted on the Property any industrial or commercial activities, except Forestry, as described below, and provided that the productive capacity of the Property to yield forest crops shall not be degraded by on-site activities.

i. Description of Forestry

- a. Forestry: For the purposes hereof, "Forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement. Forestry shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions, and non-commercial timber stand improvement activities, wildlife habitat improvement, or thinning the forest stand to maintain a view.

ii. Requirements for Forestry:

- a. Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:
- "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 2004); and
 - "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest

Sustainability Standards Work Team, 2010), or similar successor publications.

- b. The following Forestry riparian buffer zones shall apply for Forestry activities and other tree cutting and removal operations within and adjacent to wetlands, perennial streams and rivers, hereinafter referred to collectively as "water body or water bodies." Streams and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Wetlands shall include any wetlands shown on National Wetland Inventory maps, Town wetland inventory maps, NH GRANIT land cover maps, or other sources mutually agreed to by the Grantor and Grantee. A map entitled "Water Resources-Buffer Zone Locations Map", included in the Baseline Documentation Report, designates the approximate locations of the water bodies and riparian buffer zones.
 - i. Forestry riparian buffers zones shall include one hundred (100) feet from each side of a water body and shall be expanded as necessary to encompass all vegetative communities with slopes greater than 35%, or soils classified as highly erodible that are adjacent to the water body.
 - ii. The distance of the riparian buffer shall be measured from the edge of the normal high water mark of the water body. In areas where there are wetlands contiguous to a stream or river the riparian buffer shall be measured from the upland edge of the wetland.
 - iii. There shall be no Forestry activities, soil disturbance, tree cutting and removal, or application of herbicides or pesticides within the water body and the first twenty-five (25) feet from the normal high water mark or water body edge as defined above. The Grantor may request permission from the Grantee to conduct any of the before stated activities for wildlife habitat improvement purposes, construction of wildlife viewing platforms and maintaining the view from said platforms, or to meet other specific natural resource or ecological goals (e.g., invasive species removal). For wildlife habitat improvements or improvements for natural resource or ecological goals, the Grantor must submit the request to the Grantee as part of the Forest Management Plan or an amendment thereto. For the construction of wildlife viewing platforms, the Grantor shall submit the request to the Grantee as a written plan with scaled drawings indicating the location, size, materials, vegetation to be impacted by the platform and viewing zone, and access to the viewing platform. The Grantee shall first consult with the Third Party Holder and either approve, deny, or approve with conditions the request at their sole discretion.
 - iv. Within the remainder of the riparian buffer zone tree harvest methods shall be limited to single tree or small group selection cuts, leaving a well-distributed, uneven-aged stand of trees.
 - v. No new roads or log landings shall be constructed within riparian buffer zones, except in circumstances where complying with this provision may result in a greater overall negative environmental impact or would preclude reasonable access to areas suitable to Forestry. Existing roads, as identified by the Baseline Documentation Report, may be retained and maintained. Skid trails and log landings shall be kept to the minimum

reasonably necessary for tree removal. Any roads, skid trails, and log landings within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.

- c. Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:
 - maintenance of soil productivity;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality and recreational access and trails;
 - protection of significant or fragile natural areas, exemplary natural communities, and rare, threatened and endangered species, including their habitats;
 - protection of significant historic and cultural features; and
 - conservation of native plant and animal species.
- d. Any Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- e. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a licensed forester or other qualified person at least thirty (30) days prior to the date of harvest.
- f. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
 - the accomplishment of those Purposes for which this Easement is granted,
 - the goals in Section 2.A.i.c. above, and
 - water bodies as defined herein, riparian buffer zones and their delineation on a map(s) in the plan and how water bodies and vernal pools will be protected in association with forest management activities including but not limited to road construction and maintenance and implementation of stand prescriptions.
- g. At least thirty (30) days prior to any Forestry activities, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.ii, a-d, above, has been prepared in compliance with the terms of this Easement. The Grantee may request the Grantor to submit the Plan itself to the Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.

- h. Forestry activities shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
 - i. Prior to conducting Forestry activities, in those areas proposed for the forest activities the riparian buffers shall be clearly marked by a licensed professional forester, or other qualified person approved in advance and in writing by the Grantee.
 - j. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Jones 1993), or similar successor publications.
- B. The Property shall not be subdivided, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, dam, fence, utility line, bridge, culvert, wildlife viewing platform, or maple sugar house; and ii) not detrimental to the Purposes of this Easement. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, barn, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
 - iii. are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.
 - F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
 - G. There shall be no dumping, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous.
 - H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
 - I. The Grantor shall not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3(A) below.
 - J. The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, pedestrian and bicycle, non-motorized, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, mountain biking, wildlife observation and cross-country skiing, but the landowner shall retain the right whether to allow hunting and camping. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to forestland during harvesting or other forest management activities.
3. RESERVED RIGHTS
- A. The Grantor reserves the right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property, including but not limited to emergency rescue operations, forestry, habitat management, and to control or remove non-native or invasive species. This provision is an exception to Section 2.I., above.
 - B. The Grantor reserves the right to create and maintain trails for low-impact, non-commercial outdoor recreational purposes, provided said trails are consistent with and not detrimental to the Purposes of this Easement. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (see Appalachian Mountain Club, The Complete Guide to

Trail Building and Maintenance, 4th edition; and State of New Hampshire, Best Management Practices for Erosion Control During Trail Maintenance and Construction, 2004, or similar successor publications).

- C. The Grantor reserves the right to maintain, reconstruct and repair, but not pave or make wider than required by the Town of Stratham Fire Department, the existing Access Road shown on the Survey along with related drainage structures, and to grant a right of way, permission, or other similar legal rights to use and maintain said Access Road to benefit the two adjoining tracts shown on the Survey: the tract now or formerly owned by Albert R. & Donna T. Frost and the other tract now or formerly owned by the Heirs of Charles E. Eastman. This provision is an exception to Section 2.C and 2.H., above.
- D. The Grantor reserves the right to grant permission to, or grant a legal right to, benefit the tract now or formerly owned by Albert R. & Donna T. Frost to take the water from the spring shown on the Survey and to use above ground or below ground pipes to transport the water from said spring to the Frost property. This provision is an exception to Sections 2.D. and 2.H., above.
- E. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights.
- F. The Grantor reserves the right to withdraw groundwater on a sustainable yield basis and to remove said groundwater from the Property only for the purpose of providing a public water system, as defined by NH RSA 485:1-a, XV, as it may be amended from time to time. "Sustainable yield" shall mean that rate of annual water withdrawal that can be replenished from the aquifer on an annual basis, based on well recovery rates. Withdrawal or removal of groundwater for private, commercial purposes not served by a public water system is expressly prohibited, except as provided in Section 3.D.
 - i) Test Wells: Prior to drilling test wells on the Property, the Grantor shall submit a Test Well Site Plan to the Grantee for review and approval. Said plan shall identify the proposed locations and access for the test wells and identify the steps to be taken to minimize damage to the Property and Purposes of this Easement. The Grantor shall include in The Test Well Site Plan a restoration plan that addresses the impacts associated with the test wells and associated improvements.
 - a. The Grantee shall limit its review of the Test Well Site Plan to the proposed access and restoration plan components and either approve, approve with conditions, or deny those components of the Test Well Site Plan within thirty (30) days of receipt of the request. The Grantee shall not unreasonably withhold such approval.
 - b. The Grantor is encouraged to communicate regularly and openly with the Grantee as it develops its Test Well Site Plan.

- c. In the event that if after two (2) years from the date of installation of the test wells the Grantor has not submitted a Construction Proposal per Env-Ws 374.02, as may be amended, to the State of New Hampshire, then the Grantor shall initiate the restoration plan and complete it within six (6) months. The Grantor may request extensions from the Grantee for implementing and completing the restoration plan which the Grantee may grant at its discretion.
- ii) Facilities and Improvements: For the purposes hereof, permitted activities in conjunction with a groundwater withdrawal development project shall consist of the installation, maintenance, monitoring, and replacement of test wells, long-term water production wells, monitoring wells, monitoring stations, pumping stations, and ancillary improvements such as but not limited to permeable-surface roads, signs, electric utilities necessary to power the pumps and related equipment, pipes, conduits, and security facilities, but only if they are required to be located on the Property. To the extent that said facilities and improvements must be located on the Property, those facilities and improvements shall, to the maximum extent possible, be located so as to minimize the impact to and disturbance of the Property and the Purposes of this Easement, and are subject to the prior written approval of the Grantee, as outlined below. Other major facilities including, but not limited to, storage tanks, shipping facilities, non-permeable pavement, and office and laboratory facilities for employees shall not be located within the Property.
- a. Prior to submitting a Construction Proposal per Env-Ws 374.02, as may be amended, for approval by the appropriate State of New Hampshire agency, the Grantor shall submit to the Grantee for approval the following information and plans (hereinafter, collectively referred to as "Site Plans") in appropriate format (e.g., documents, maps, plans, specifications, and designs) sufficient to identify the location and design of any proposed facilities or improvements on the Property, including but not limited to temporary or permanent well sites, pumping stations, and ancillary improvements such as but not limited to access ways/roads, signs, electric utilities, pipes, conduits, and security facilities and the provisions to minimize disturbance and impacts to the Property and Purposes of this Easement during and after installation and operation of the ground water withdrawal development project for the public water system.
 - b. The Grantee shall approve, approve with conditions, or deny the proposed Site Plans in writing within sixty (60) days of its receipt and base its decision on the impacts to the Property and the Purposes of this Easement. The Grantee shall not unreasonably withhold such approval.
 - c. The Construction Proposal submitted to the State of New Hampshire shall accurately reflect the Site Plans approved by the Grantee.
 - d. Upon completion of the ground water withdrawal development project, the Grantor shall submit an "as built" Site Plan to the Grantee.

- e. Any proposal to expand, enlarge or relocate facilities and improvements related to groundwater withdrawal shall require the approval of the Grantee in accordance with process and procedure in 3.F.ii. a-d above. This provision does not apply to increases in water withdrawal rates or amounts or to maintenance or repair of said facilities and improvements.
- f. If the groundwater wells and associated facilities and improvements are no longer used and there is no feasible plan for their eventual reuse, the Grantor shall undertake the restoration of the site in consultation with the Grantee.
- iii.) Compliance with Law: Activities taken by the Grantor in execution of the groundwater withdrawal right herein shall comply with all federal, state and local requirements, including but not limited to requirements associated with public water supply, water withdrawals, and groundwater discharges, and the Grantor shall obtain any associated and requisite approvals from said agencies and abide by the conditions of said approvals.
- iv.) The Grantor shall provide to the Grantee a copy of any application for renewal, and any subsequent approval by the State, of the groundwater withdrawal permit.

This provision is an exception to Section 2.C., D., and F. above.

- G. The Grantor reserves the right, subject to the following conditions and prior written approval of the Grantee to:
 - a. construct, maintain, repair, reconstruct one parking area on the Property (referred to hereinafter as "Parking Area"); however, maintenance and repair shall not require Grantee approval; and
 - b. to enlarge and to modify the Parking Area.

Said Parking Area shall meet the following conditions:

1. Said Parking Area shall be for the sole purpose of providing public access to the Property.
2. Said Parking Area shall include appropriate barriers or otherwise be constructed to prevent unauthorized vehicular access to the Property.
3. Said Parking Area shall not be artificially illuminated.
4. Said Parking Area shall be constructed of a permeable surface.
5. Said Parking Area shall be designed and constructed to support no more than six (6) parking spaces, appropriate for the Property and its current and projected use, and shall minimize impacts on the Purposes of this Easement.

To exercise these rights requiring Grantee approval, the Grantor shall provide written notice to the Grantee at least forty-five (45) days prior to undertaking the proposed activities. Said notice shall include specific details and plans, including but not

limited to the proposed activity, location, purpose, and details and timing of the activity. Within thirty (30) days of receipt of the Grantee's written notice and after consideration of the impact of the proposed activity on the Purposes of this Easement, the Grantee shall approve, approve with conditions, or disapprove in writing the proposed activity. The Grantee shall not unreasonably withhold such approval. The Grantor shall secure such approval, as well as necessary local, state and federal permits, prior to commencing any work to construct, reconstruct, or enlarge said Parking Area.

4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least ten (10) days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

5. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

6. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee and Third Party Holder shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement. For these purposes, and for the benefit of the Property, the Grantor hereby also conveys and grants to the Grantee and Third Party Holder an appurtenant right of access for pedestrian access from and to Boat Club Drive over an approximately twenty (20) foot right of way further described in Appendix A. The location of the right of way may be relocated by the Grantor, Grantee and Third Party Holder upon the mutual agreement of the three parties. The burden and benefit of this right of access, as established herein, shall run with the land.
- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not

exceed thirty (30) square inches in size, along the Property's boundaries.

7. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542. The parties shall have ten (10) days to accept or refuse binding arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.
- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements

concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

8. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, “Breach of Easement...,” without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor’s liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee’s rights under this Section, “Breach of Easement...,” apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, “Resolution of Disagreements,” which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee’s rights hereunder.

- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

9. **THIRD PARTY RIGHT OF ENFORCEMENT**

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder

requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the Grantee to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee.

- B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Grantee's or Third Party Holder's assignee or transferee as specified in Section 5 above. Any such assignee or transferee shall have like power of assignment or transfer. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

10. AMENDMENT

If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification is given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor and the Grantee and shall be recorded in the Rockingham County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

11. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

12. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

13. EXTINGUISHMENT & CONDEMNATION

- A. Extinguishment. If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 13.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.
- B. Condemnation. If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 13.C. below.
- C. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 13.A and 13.B above, shall have a fair market value which shall be determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned. The Grantee shall use its share of the proceeds for conservation purposes consistent with the Purposes of this Easement.

14. ADDITIONAL EASEMENT

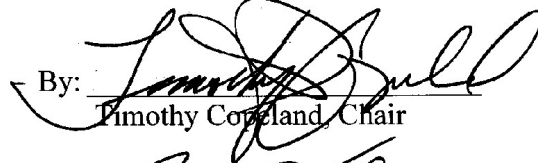
Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.


The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe

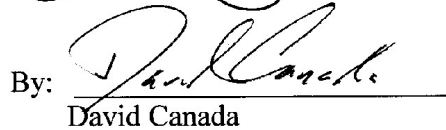
and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, I (We) have hereunto set my (our) hand(s) this 21st day of December, 2015.

GRANTOR: STRATHAM BOARD OF SELECTMEN

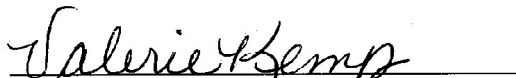
By: 
Timothy Copeland, Chair

By: 
Bruno Federico, Vice Chair

By: 
David Canada

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM


The foregoing Conservation Easement Deed was acknowledged before me this 21st day of December, 2015 by Timothy Copeland, Bruno Federico, and David Canada, duly authorized Selectmen of the Town of Stratham Board of Selectmen, on behalf of the Town of Stratham.


Notary Public/~~Justice of the Peace~~

My commission expires:

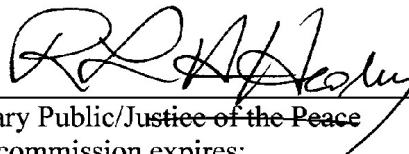
VALERIE KEMP
Notary Public - New Hampshire
My Commission Expires January 28, 2020

ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: 
Title: Executive Director
Duly Authorized
Date: 12/23/2015

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 23rd day of December, 2015, before me personally appeared **Brian Hart, Executive Director of the Southeast Land Trust of New Hampshire**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.


Notary Public/Justice of the Peace
My commission expires:

ROBIN L. HILMAN-HEALEY, Notary Public
My Commission Expires May 9, 2017

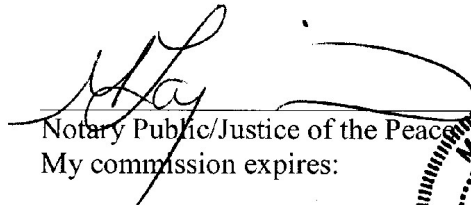


Third Party Holder Accepted by the State of New Hampshire on this 17th day of December, 2015:

for 
Thomas Burack, Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack, ss.

On this 17th day of December, 2015, before me personally appeared **Thomas Burack, the Commissioner of the New Hampshire Department of Environmental Services**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained.


Notary Public/Justice of the Peace
My commission expires:



APPENDIX A

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated off of Boat Club Road, so-called, in the Town of Stratham, County of Rockingham, State of New Hampshire, consisting of approximately twenty-nine (29) acres, shown on a plan entitled "Plat of Zarnowski Land Off Boat Club Drive Stratham, New Hampshire" by James Verra and Associates, Inc. dated January 16, 2006, Revised February 5, 2007 and recorded at the Rockingham County Registry of Deeds as Plan # D-34723 (hereafter "Survey"), and more particularly bounded and described as follows:

Beginning at a railroad spike set at the base of a cedar fence post at the southeasterly corner of said premises at land of Kenneth L. & Helen L. Cornwell; thence $66^{\circ} 45' 45''$ West by land of said Cornwell and by land of Squamscott Scullers, Ltd. 117.45 feet to a point; thence turning and running North $23^{\circ} 21' 08''$ East by land of said Scullers 24.95 feet to an iron rod;

Thence turning and running for three courses by land of said Scullers as follows: North $66^{\circ} 38' 52''$ West 202.51 feet to an iron rod; North $63^{\circ} 07' 23''$ West 299.98 feet to an iron rod and North $66^{\circ} 07' 46''$ West 194.28 feet to an iron rod in the center line of a creek; thence turning and running for three courses in a northerly and northwesterly direction by said creek and by land of said Scullers to an iron pipe; the last three courses having the following tie courses: North $32^{\circ} 44' 30''$ East 122.32 feet to a point, North $4^{\circ} 25' 45''$ West 121.55 feet to an iron rod and North $35^{\circ} 45' 12''$ West 116.11 feet to an iron pipe found at the end of a ditched creek line;

Thence turning and running North $65^{\circ} 51' 10''$ West by said ditched creek line and land of said Scullers 292.58 feet to a point; thence North $58^{\circ} 18' 06''$ West continuing by said creek line and land of said Scullers 30.94 feet to a point; thence turning and running Southwesterly, Westerly, Northeasterly and again Southwesterly by the creek line and land of said Scullers, the last four courses having the following tie courses: South $44^{\circ} 31' 00''$ West 83.74 feet; North $66^{\circ} 03' 34''$ West 60.41 feet, North $42^{\circ} 22' 50''$ East 95.27 feet and South $79^{\circ} 22' 07''$ West 98.67 feet to a point on the approximate top of the bank of the navigable portion of the Squamscott River;

Thence turning and running in a Northerly and Northeasterly direction by the Squamscott River to a point at land of the heirs of Charles E. Eastman, the last four courses having the following tie courses: North $2^{\circ} 39' 38''$ East 117.58 feet; North $17^{\circ} 03' 09''$ East 84.18 feet; North $39^{\circ} 28' 45''$ East 57.59 feet and North $48^{\circ} 53' 49''$ East 368.20 feet to a point at land of the heirs of said Eastman;

Thence turning and running for three courses by land of the heirs of said Eastman as follows: South $58^{\circ} 58' 07''$ East 65.00 feet to an iron rod; South $58^{\circ} 58' 07''$ East 315.75 feet to an iron rod and North $53^{\circ} 24' 38''$ East 118.00 feet to an iron rod at land of Albert R. Frost and Donna T. Frost; thence for three courses by land of said Frost as follows: North $55^{\circ} 33' 49''$ East 15.13 feet to an iron pipe; North $48^{\circ} 50' 42''$ East 99.97 feet to an iron rod and North $48^{\circ} 54' 02''$ East 84.90 feet to an iron pipe at land of W. Douglas Scamman, Jr., Trustee of the W. Douglas Scamman, Jr. Rev. Trust;

Thence turning and running for six courses by land of said trust as follows: South 75° 00' 35" East 247.10 feet to an iron rod; South 76° 18' 12" East 109.91 feet to an iron rod; South 66° 49' 00" East 92.23 feet to an iron rod; South 66° 25' 55" East 200.17 feet to a spike set vertically in an 18 inch stump; South 67° 03' 05" East 38.23 feet to a 12 inch deciduous tree and South 66° 11' 50" East 155.09 feet to an iron rod;

Thence turning and running for fifteen courses continuing by land of W. Douglas Scamman, Jr., Trustee and in part by a barbed wire fence as follows: South 21° 39' 14" West 68.33 feet to a 36 inch pine tree; South 19° 35' 32" West 49.94 feet to a point ; South 19° 35' 32" West 43.22 feet to an iron rod; South 30° 34' 34" West 172.39 feet to a cedar fence post; South 28° 40' 47" West 63.86 feet to an iron rod; South 29° 10' 46" West 41.83 feet to a point; South 29° 10' 46" West 54.48 feet to a cedar fence post; South 26° 30' 31" West 159.89 feet to an iron rod; South 28° 15' 36" West 83.11 feet to a 12 inch hemlock tree; South 26° 48' 42" West 102.46 feet to an 18 inch maple tree; South 24° 53' 07" West 65.09 feet to an 18 inch hemlock tree; South 29° 17' 18" West 110.02 feet to an 11 inch hemlock tree; South 27° 14' 02" West 103.38 feet to a 16 inch oak tree; South 21° 40' 02" West 51.44 feet to a 36 inch hemlock and South 25° 50' 45" West 77.64 feet to the railroad spike set at the point of beginning. Said tract or parcel of land contains 29 acres, more or less.

SUBJECT TO a 225 ' wide easement for power transmission in favor of Public Service Company of New Hampshire as shown on the above described plan and as described in easement deed dated August 6, 1948 and recorded in the Rockingham County Registry of Deeds at Book 1150, Page 170.

TOGETHER WITH an appurtenant right of access for the Grantee and Third Party Holder to pass and repass on foot or by vehicle, all as more particularly described in Section 6.A. of the Conservation Easement, from and to Boat Club Drive through and across a twenty (20) foot wide right-of-way described in a certain "Easement Agreement" dated December 8, 1995 by and between Hepzibah R. Powers, Squamscott Scullers, Ltd., Daniel and Evelyn Zarnowski and Mark and Susan Benoit, which Easement Agreement is recorded in the Rockingham County Registry of Deeds at Book 3131, Page 1648. For further reference to the location of said right-of-way see the "Relocated 20' Right of Way to Lots 1/9 & 1/10" on the "Subdivision Plan for Riverclub Estates River Road County of Rockingham Stratham, N.H." by Richard P. Millette and Associates, dated August 17, 1994 and recorded in said Registry of Deeds as Plan # D-23655.

MEANING AND INTENDING to describe all and the same premises conveyed by Warranty Deed from Daniel J. Zarnowski, Evelyn H. Zarnowski, and Mary Jane Zarnowski to the Town of Stratham, dated May 11, 2007, and recorded at said Registry at Book 4799, Page 2898.